

**Chief Constable of the Police Service of Northern Ireland and another  
(Appellants/Cross-Respondents) v Agnew and others (Respondents/Cross-Appellants)**

**Appellants/Cross-Respondents** (1) Chief Constable of the Police of Northern Ireland  
(2) Northern Ireland Policing Board

**Respondents/Cross-Appellants** (1) Alexander Agnew and others  
(2) David Brian Anderson and others  
(3) Richard Logan Smyth and others  
(4) [Nigel Downey and others]

**Intervener** UNISON

### Issues

- (1) Whether the Respondents in bringing their complaints as to a series of unlawful deductions and underpayments of holiday pay are restricted to a period ending no later than three months prior to the presentation of the complaints to the Tribunal.
- (2) What is meant by a series of unlawful deductions to pay and when such a series ends.
- (3) What is the correct approach to calculating unlawful deductions and underpayments of holiday pay, including the approach to annual leave entitlement, overtime and the reference period for calculating normal pay.
- (4) Whether the Respondents have been discriminated against contrary to Article 14 of the European Convention on Human Rights read in conjunction with Article 1 of Protocol 1.

**Facts** Officers and civilian employees of the Police Service of Northern Ireland had, since the introduction of the Working Time Regulations (Northern Ireland) 1998 (“WTR (NI) 1998”), been paid their basic pay while on annual leave (i.e. without having regard to overtime and certain allowances), whereas the case law of the Court of Justice of the European Union in relation to article 7 of the Working Time Directive 2003/88/EC had evolved to require that workers be paid their “normal pay” during such leave.

This only came to the attention of the Appellants following delivery of the decision in *Bear Scotland Ltd v Fulton* [2015] ICR (EAT). The Respondents began presenting their complaints for unlawful deductions from pay and underpayments of holiday pay to the Industrial Tribunal in 2015.

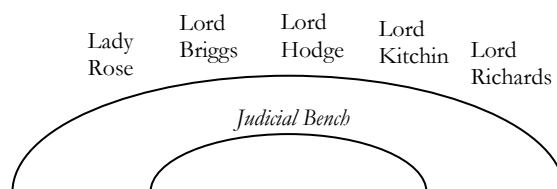
The claims were made under Articles 45 and 55 of the Employment Rights (Northern Ireland) Order 1996 (“ERO”), which relates to a “worker” but has no express provision deeming police constables to be workers. In the alternative, the claims were made under Regulation 30 WTR (NI) 1998 and Regulation 43 Working Time Regulations (Northern Ireland) 2016, under which a worker (which includes a police officer) may present a complaint as to underpayment, but the complaint must be brought within three months.

The Appellants accept that the calculation and payment of holiday pay as basic pay instead of normal pay amounts to making an unlawful deduction from wages and a failure to pay holiday pay in full. This appeal is concerned with the extent of the remedy available to the Respondents. This includes how far back the claims may reach, and whether the Respondents are “workers” within the meaning of the ERO and are thus not limited to a period of three months. Further issues on appeal include the correct method of calculating unlawful deductions and underpayments, the proper mode of calculating “normal pay”, and whether the Respondents have been discriminated against contrary to Article 14 European Convention on Human Rights read in conjunction with Article 1 Protocol 1.

## Chronology of Proceedings

Date of hearing	Date of judgment	Court	Judge	Order
8-9 April 2019	17 June 2019	Court of Appeal	Stephens LJ, Treacy LJ, O'Hara J	Appeals dismissed; Respondent's cross appeal allowed on one issue.  (application for leave to appeal to the Supreme Court refused 9 Sept 2019)
26-27 Sept, 1-2 Oct 2018	2 November 2018	Industrial Tribunal	Mr N Kelly; Mrs Dorothy Adams LLM; Mr Iain Foster	Claims succeed / decided in favour of police officers and civilian claimants.
	24 March 2020	Supreme Court	Lord Kerr Lord Lloyd-Jones Lady Arden	Permission to appeal and permission to cross-appeal granted.

## Hearing Date: 14 & 15 December 2022 Lord Hodge, Lord Briggs, Lord Kitchin, Lady Rose, Lord Richards



### Counsel Appellants

Tony McGleenan KC  
Philip McAteer

### 1<sup>st</sup> & 3<sup>rd</sup> Respondents Groups

Jason Galbraith-Marten KC  
Peter Hopkins

### 2<sup>nd</sup> Respondents Group

David McMillen KC  
Peter Hopkins

### Intervener

Michael Ford KC  
Nicola Newbegin

### Timetable

#### Day 1

Appellants 10.30am-1pm & 2pm-4pm

#### Day 2

Respondents 10.30am-1pm & 2pm-2.45pm

Intervener 2.45pm-3.15pm

Reply 3.15pm-4pm

You can watch video of today's hearing at [www.supremecourt.uk](http://www.supremecourt.uk), from tomorrow.  
Look for the relevant case profile in our 'Current Cases' section: scroll to the bottom to see the available footage.